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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/579,327	05/25/2000	Neil H. Riordan	RIORD.004A	7262
20995	7590	02/21/2003	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			NAVARRO, ALBERT MARK	
ART UNIT		PAPER NUMBER		
1645		18		

DATE MAILED: 02/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/579,327

Applicant(s)

Riordan et al

Examiner

Mark Navarro

Art Unit

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on \_\_\_\_\_

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-21 and 34-39 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-21 and 34-39 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 17

6)  Other:

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**DETAILED ACTION**

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 22-27 have been renumbered as claims 34-39.

Applicant's amendment filed December 10, 2003 (Paper Number 16) has been received and entered. Consequently, claims 1-21 and 34-39 are pending in the instant application.

***Claim Rejections - 35 USC § 112***

1. The rejection of claims 1-21 under 35 U.S.C. 112, second paragraph, as being vague and indefinite in the recitation of "removing large cellular components" is withdrawn in view of Applicant's amendment.

***Claim Rejections - 35 USC § 102***

2. The rejection of claims 1-3, 6, and 16 under 35 U.S.C. 102(e) as being anticipated by Pancholi *et al* is withdrawn in view of Applicant's amendment.

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***Claim Rejections - 35 USC § 103***

3. The rejection of claims 1-21 under 35 U.S.C. 103(a) as being unpatentable over Kawai *et al* in view of Pancholi *et al* and Converse *et al* is withdrawn in view of Applicant's amendment.

The following new grounds of rejection are applied to the amended claims:

***Claim Rejections - 35 USC § 112***

4. Claims 1-21 and 34-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague and indefinite in the recitation of "substantially free of added raffinose and added enzymes." One of skill in the art would be unable to determine the metes and bounds of the claimed limitations. For instance, what level of added raffinose may be present and still qualify as "substantially free?" Similarly, at what level does the amount of raffinose rise to the level of "substantially present?" Without a clear definition as to the metes and bounds of "substantially free" one of skill in the art would be unable to determine the metes and bounds of the claimed invention. "Substantially exclusive lacks definitiveness." *Quaker Oil Corp. v. Quaker State Oil Refining Corp.* (PO TM TappBd) 161 USPQ 547.

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5. Claims 1-21 and 34-39 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a new matter rejection.

The claims have been amended to include the limitation “substantially free of added raffinose and added enzymes.” However, Applicant’s have not pointed to support for the newly filed amendment. Applicant is required to demonstrate clear support for the newly added limitation, or cancel the newly filed limitations.

6. Claims 1-21 and 34-39 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a new matter rejection.

The claims have been amended to include the limitation “pH of less than 6.8.” However, Applicant’s have not pointed to support for the newly filed amendment. Applicant is required to demonstrate clear support for the newly added limitation, or cancel the newly filed limitations. Likewise, claims 34-39 all recite a specific pH of less than 6.0, 5.0..., etc. Applicant is further required to demonstrate clear support for each of these specific ranges, or cancel the newly added material.

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7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Navarro, whose telephone number is (703) 306-3225. The examiner can be reached on Monday - Thursday from 8:00 AM - 6:00 PM. The examiner can be reached on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Lynette Smith can be reached at (703) 308-3909.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Group 1645 by facsimile transmission. Papers should be faxed to Group 1645 via the PTO Fax Center located in Crystal

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Mall 1. The faxing of such papers must conform with the notice published in the official Gazette 1096 OG 30 (November 15, 1989). The CMI Fax Center number is (703) 308-4242.



Mark Navarro

Primary Examiner

February 19, 2003